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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,890	07/08/2003	Gregory D. Ries	RIES-001	9853
7590	02/11/2004		EXAMINER	
Michael S. Neustel Suite No. 4 2534 South University Drive Fargo, ND 58103			SHAW, ELIZABETH ANNE	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/615,890	RIES ET AL.
	Examiner Elizabeth A. Shaw	Art Unit 3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 and 10 is/are rejected.
- 7) Claim(s) 8,9 and 11-20 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/8/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loiselle (PTO-1449-AI 5,636,591). Loiselle shows a suet bird feeder system 10 comprising a housing unit 12 with a plurality of openings 22 having a rear wall 38 and spiked support members 46 extending from the straight side walls 36 such that a suet plug 14 fits within the opening 22. Combined the supports 46 extend at least 25% the length of the opening 22. Loiselle does not show the support member extending from the rear wall. With respect to claim 1, to use the support member from the rear wall would have been obvious to one skilled in the art as a replacement of functional equivalents where the suet plug would be supported as well from the rear support as from a side support.

Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loiselle in view of Hyde (PTO-1449-AB 2,306,312). Loiselle does not show tapered sidewalls. Hyde shows a bird feeding device 12 having a housing with openings 24. The openings 24 having common rear walls (unnumbered) and tapered sidewalls such that the suet or bird food plugs inserted within the openings 24 have tapered sidewalls to fit. With respect to claim 2, to use the tapered sidewalls of Hyde with the feeder of

Art Unit: 3644

Loiselle would have been obvious to one skilled in the art as a replacement of functional equivalents.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loiselle in view of Beyea (2,833,247). Loiselle does not show the support member extending concentrically. Beyea shows an animal feeder for holding a block of animal food 3 with a rear wall 28 and a support member 32 extending concentrically from the rear wall 28. With respect to claim 3, to use the concentric support of Beyea with the feeder of Loiselle would have been obvious to one skilled in the art in order to provide a larger support to hold the food once the animal begins feeding from it and moving the food in the opening.

Allowable Subject Matter

Claims 8, 9 and 11-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Included for further reference on bird feeders are: Webster (2,801,609), St. Hilaire (3,175,536), Baensch (3,664,303) and Hume (D 194,610).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 703-308-1853. The examiner can normally be reached on M-Th 9:00-4:30.

Art Unit: 3644

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles T. Jordan
CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Elizabeth A. Shaw
Elizabeth A. Shaw
Examiner
Art Unit 3644

February 9, 2004